



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: American Material Handling, Inc.

File: B-281556

Date: February 24, 1999

Sid Goss for the protester.

John W. Huckle, Esq., Department of the Air Force, for the agency.

John L. Formica, Esq., Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's loss of a quote received through the Federal Acquisition Computer Network due to a computer malfunction does not provide a basis to sustain the protest where the loss was an isolated error, and was not part of a deliberate effort to exclude the protester from the competition or the result of the agency's failure to have adequate procedures in place for the receipt and safeguarding of quotes.

DECISION

American Material Handling, Inc. protests the award of a contract to R&R Limited under request for quotations (RFQ) No. F04684-98-Q-S178, issued by the Department of the Air Force for a 40-foot articulating boom lift. The procurement was solicited under simplified acquisition procedures through the Federal Acquisition Computer Network (FACNET).¹

We deny the protest.

The Air Force issued the RFQ through the FACNET on August 27, 1998. Soliciting through FACNET requires electronically transmitting the solicitation from a computer terminal to a government gateway, which is a computer/communications system performing a variety of data management functions. After processing by the gateway, the information is transmitted through a network entry point to Value-Added-Networks (VAN), which are private sector entities that provide the electronic

¹FACNET is an electronic marketplace for the acquisition of goods and services, which agencies can utilize to post notices of and receive responses to solicitations, post notice of contract awards, and issue orders where practicable; and private sector users can access notice of solicitations, receive orders and access information regarding awards. S.D.M. Supply, Inc., B-271492, June 26, 1996, 96-1 CPD ¶ 288 at 1-2, recon. denied, Department of the Army--Recon., B-271492.2, Nov. 27, 1996, 96-2 CPD ¶ 203.

procurement information to businesses that have registered to contract with the government through the FACNET. Any electronic commerce, such as the submission of a quote, requires these businesses to access the same process in reverse order. S.D.M. Supply, Inc., supra, at 2. Here, the RFQ was transmitted from Vandenburg Air Force Base (AFB) through the government gateway at Hill AFB with a stated due date for quotes of September 4.

American asserts that it transmitted a quote priced at \$51,731 for the boom lift in response to the RFQ on September 4. In support of this assertion, American has submitted a copy of the quote it claims to have submitted with a September 4 date on it. American explains that the copy of the quote was returned by its VAN, and that the date was automatically recorded on the copied quote when it was transmitted through the FACNET.

According to the Air Force, their computer system at Vandenburg AFB reserved for the receipt of quotes malfunctioned on September 4, and they were unable to retrieve any quotes that may have been submitted on that date.² In view of this problem, the Air Force retransmitted the RFQ on September 17, with a revised due date for quotes of September 21. The agency also intended to transmit with the reissued RFQ a note stating as follows: "Our computer system crashed and all bid offers were lost. Please submit your bid no later than 21 September 98." Agency Report, Tab 5, Buyer's Note, Sept. 16, 1998. However, during the course of this protest it was discovered by the agency that the note erroneously "stayed within the Government computer system," and was not transmitted over the FACNET. Agency Memorandum of February 5, 1999. The protester explains that it did not submit a second quote upon seeing only the retransmission of the RFQ because the protester assumed that its quote was properly submitted, and was unaware from the retransmission itself that its quote had been lost due to a malfunction in the Air Force's computer system.

On September 21, the Air Force received a quote in response to the retransmitted RFQ from R&R at a price of \$52,040. No other quotes were received, and a purchase order was issued to R&R on September 29.³

²The determination that no quotes could be recovered was made after a thorough search of the agency's computer system and the government gateway.

³The notification of the issuance of the purchase order was transmitted on an alternate computer system, and American did not learn of the award until October 20. American then filed an agency-level protest, which the Air Force denied. This protest followed. In the interim, the articulating boom lift was delivered to the Air Force by R&R.

American asserts that it is being unfairly "penalized for [the agency's] computer failure," and argues that it should have received the purchase order. Protest at 2.

When using simplified acquisition procedures, agencies must promote competition "to the maximum extent practicable." 10 U.S.C. § 2304(g)(3) (1994). In meeting this requirement, agencies must make reasonable efforts, consistent with efficiency and economy, to afford all eligible and interested vendors an opportunity to compete. S.D.M. Supply, Inc., supra, at 4. Agencies have a fundamental obligation to have procedures in place not only to receive quotations, but also to reasonably safeguard quotations received and to give them fair consideration. Id. However, as a practical matter, even with appropriate procedures in place, an agency may lose or misplace a bid or quotation, and the occasional loss of a bid or quotation--even if through the negligence of the agency--generally does not entitle the bidder or vendor to relief. Id.; Interstate Diesel Serv., Inc., B-244842.2, Sept. 27, 1991, 91-2 CPD ¶ 304 at 2.

Our Office has recognized a limited exception to the general rule that the negligent loss of a quote or bid in and of itself does not entitle a bidder to relief. This exception applies where the record demonstrates that the loss was not an isolated incident, but rather, was part of a systemic failure on behalf of the agency such that the procedures in place to receive and safeguard quotes cannot be considered reasonable. For example, in East West Research Inc., B-239565, B-239566, Aug. 21, 1990, 90-2 CPD ¶ 147, aff'd, Defense Logistics Agency--Recon., B-239565.2, B-239566.2, Mar. 19, 1991, 91-1 CPD ¶ 298, our Office concluded that the contracting agency breached its statutory duty to promote competition to the maximum extent practicable where during a period of less than 1 week the contracting agency received, and then lost, two quotations submitted by the same vendor in response to two different RFQs. Similarly, our Office found in S.D.M. Supply, Inc., supra, that the agency's procedures for receiving and safeguarding quotes transmitted through the FACNET could not be found reasonable where the record evidenced that in addition to losing the protester's quote, the agency had previously lost the quotes of other vendors submitted in response to a number of other RFQs.

The Air Force reports that the problems encountered, that is, the loss of any quotes received when the system malfunctioned on September 4 and the failure of the note informing vendors of the malfunction to accompany the retransmitted RFQ, were isolated events. Because the record here does not evidence that the loss of

American's quote resulted from any deliberate effort on the agency's part or that it was part of a systemic failure by the agency to receive and safeguard quotes, the loss of American's quote, while unfortunate, provides no basis to provide it relief.

The protest is denied.

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